

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MARCUS B. GORDON, SR

PLAINTIFF

VS.

CIVIL ACTION NO. 5:04cv224-DCB-JCS

WARDEN M. PETTIFORD, ET AL.

DEFENDANTS

ORDER

This cause is before the Court on remand from the Fifth Circuit Court of Appeals. Marcus B. Gordon, Sr. brought this Bivens action against Warden Michael Pettiford and other officials at the Yazoo City Federal Correctional Institute (FCI - Yazoo). Gordon alleges in his complaint that the defendants violated the Americans with Disabilities Act, the Rehabilitation Act, and the Eighth Amendment to the United States Constitution by depriving him of a "top blanket permit." On March 1, 2007, this Court adopted in part the Report and Recommendation of the United States Magistrate Judge and dismissed all of the plaintiff's claims, except for his Eighth Amendment claim against Pettiford. As to that claim, the Court concluded that the plaintiff had provided sufficient evidence to survive the defendant's motion for summary judgment. Additionally, the Court rejected Pettiford's qualified immunity defense. On February 8, 2008, Pettiford filed an interlocutory appeal in the Fifth Circuit Court of Appeals challenging this Court's denial of qualified immunity. The appellate court, having

concluded that Pettiford was entitled to qualified immunity, instructed this Court to dismiss the Eighth Amendment claim against him. Accordingly,

IT IS HEREBY ORDERED that the plaintiff's Eighth Amendment Claim against Michael Pettiford is dismissed with prejudice.

IT IS FURTHER ORDERED that Gordon's Motion for Summary Judgment [docket entry no. 49] against Pettiford is **DENIED AS MOOT**.

A separate final judgment in compliance with Rule 58 of the Federal Rules of Civil Procedure shall be entered, dismissing this action with prejudice.

SO ORDERED, this the 24th day of April 2009.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE